IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : February 09, 2007

Teja Ram alias Tejua versus State of Punjab

Coram: Hon'ble Mr. Justice Virender Singh

Present: Ms. Vandana Malhotra, Advocate for the appellant
Mr. Janender Chandail, Assistant Advocate General, Punjab

Virender Singh, J.

At the very outset, it is worth mentioning here that the appellant stands convicted in another case bearing FIR No. 55 dated 16.8.93 under section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short 'the Act') registered at Police Station Phul (Bathinda) for having in possession 7 kgs of opium. He has preferred another appeal (Criminal Appeal No. 962-SB of 2000) which could not be heard along with the instant appeal as the trial court records were received in this case only. The said appeal was heard on 7.2.2007 and now stands reserved.

The present appeal relates to FIR No. 48 dated 11.8.1003, registered at Police Station Phul, under section 18 of the Act in which

appellant stands convicted under section 18 of the Act for allegedly keeping in his conscious possession 8 kgs 500 grams opium on 11.8.1993. Vide impugned judgment of learned Additional Sessions Judge, Bathinda dated 20.7.2000, he has been sentenced to undergo RI for ten years and to pay a fine of Rs one lac, in default thereof to further undergo RI for one year. Aggrieved by the same, he has preferred the instant appeal which is now argued by Ms Vandana Malhotra, an Advocate who represents the appellant through Punjab Legal Services Authority as she is on its panel.

In short, the case of the prosecution is that on 11.8.1993 when aforesaid SI Harjinderpal Singh PW2 had apprehended the appellant and had apprised him of his statutory right under section 15 of the Act of being searched before a Gazetted Officer or a Magistrate, he expressed his desire to be searched in the presence of a Gazetted Officer. Consequently, DSP Sukhdev Singh Singh PW1 was called at the spot and on his direction gunny bag being carried by the appellant was searched. Out of the recovered material, 10 grams was separated as representative sample whereas the residue opium on weighment was found to be 8 kgs 490 grams. The sample and the residue were then converted into two separate parcels and sealed with seal bearing impression 'HPS' (for Harjinderpal Singh). The case property was subsequently taken into possession vide recovery memo Ex. PA. Sample impression slip Ex. P1 was also prepared separately. The

appellant was formally arrested and grounds of arrest were disclosed to him vide memo Ex. PD. Ruqa Ex. PF was sent to the Police Station on the basis of which formal FIR Ex. PF/1 was registered. Rough site plan Ex. PE was also prepared at the spot. Special report Ex. PC was submitted after completion of the investigation at the spot. The appellant and the case property were produced before Sub Divisional Judicial Magistrate, Phul vide application Ex. PG and after obtaining his orders Ex. PG/1, the same was deposited in the Judicial Malkhana. On the receipt of the sample report Ex. PH from Chemical Examiner declaring the representative sample to be of opium, the investigation was completed against the appellant and challan was filed. The learned trial court charged the appellant under section 18 of the Act.

The prosecution in order to substantiate the charge examined PW1 Sukhdev singh, the then DSP who reiterated the prosecution case and proved the recovery memos, Inspector Harjinderpal Singh PW2, the Investigating Officer who had also supported the entire case of the prosecution and proved certain documents prepared by him. HC Narbir Singh PW3 and Constable Kamaljit Singh PW4 had tendered their affidavits Ex. PH/1 and PJ respectively to prove the link evidence. Report of the Chemical Examiner, Patiala Ex. PH was also tendered into evidence.

The stand taken by the appellant as emerges from his statement

recorded under section 313 Cr.P.C. is that he was picked up by the police at the instance of one Gurdev Singh of village Gill Kalan with whom he had some money dispute as he had to take Rs 70,000/- from him.

In defence, appellant has produced HC Chand Singh as DW1 who had proved the copies of some DDR/FIR.

The learned trial court has convicted and sentenced the appellant as indicated herein above.

I have heard Ms Vandana Malhotra, learned counsel for the appellant and Mr. Janender Chandail, learned Assistant Advocate General, Punjab. With their assistance, I have also gone through the entire record minutely.

Ms Malhotra contends that the case of the prosecution is not free from doubt as the investigating officer had not joined any independent witness whereas he had ample time to call any person from the village including Lambardar or Sarpanch. The conviction is based on the statement of official witnesses alone, which otherwise, is discrepant on certain material aspects, and, therefore, the case of the prosecution is not free from doubt.

I do not agree with the submissions advanced by Ms. Malhotra. No doubt in the case in hand, no effort was made by the police party to join the independent witness from nearby village but the same cannot be said to

be a ground to discard the case of the prosecution in its entirety. It depends upon the facts of each case. The Court in such type of situation is expected to analyse the case of the prosecution with more care and caution. The appellant hails from Rajasthan who was carrying huge quantity of opium with him. He was apprehended in Punjab. There could not be any animosity in the bosom of any of the police official to falsely implicate him. Even the recovery was effected in the presence of a senior police official (DSP) and therefore, there is no reason to discard the case of the prosecution simply on the ground of non-joining of independent witness.

The learned counsel then submits that there is non compliance of section 50 of the Act inasmuch as no proper notice under section 50 of the Act was given to the appellant. He, therefore, deserves acquittal on this vital flaw.

I do not find any substance even in this limb of argument. The appellant was carrying the bag on his head which was containing contraband and therefore, it cannot be said to be a search of a person so as to attarct the provisions of section 50 of the Act as has been held in the latest judgment of the Apex Court rendered in **State of Himachal Pradesh vs Pawan Kumar,** 2005(2) All India Criminal Law Reporter, 653. To be fair to Ms. Malhotra, it may be observed here that there is a complete compliance of section 50 of the Act as the appellant was apprised of his

right to be searched in the presence of Gazetted Officer or a Magistrate. Since he reposed confidence in a Gazetted Officer, DSP Sukhdev Singh was called at the spot and the recovery was allegedly effected in his presence.

The learned counsel then submits that the link evidence is missing in this case as the case property was not produced before the Incharge of the Police Station for safe custody. Even compliance of section 55 of the Act is not said to be mandatory in nature, but if it causes prejudice to the accused, the same can be taken against the prosecution.

I do not find any force in the aforesaid argument advanced by Ms. Malhotra. Harjinderpal Singh PW2, the Investigating Officer was in fact working as SI/SHO, Phul where the present case was registered. In his substantive statement he categorically stated that after reaching the Police Station, Phul, the appellant was lodged in the police lock up and the case property was deposited with Nirvair Singh. The same was produced before the Ilaqa Magistrate on the following day. An application Ex. PG was also moved for getting further directions of the Court and on the basis of the orders Ex. PG/1, the case property was deposited with the aforesaid MHC. Therefore, it goes to show that the Investigating Officer who himself was the Incharge of the Police Station being SHO had complied with the provisions of section 55 of the Act and I do not find any irregularity in this regard. For my satisfaction, I have seen the affidavits of both the official

witnesses with regard to the link evidence and find no infirmity in the same. Therefore, the submissions advanced by Ms. Malhotra deserve to be rejected.

Ms. Malhotra otherwise has not been able to pin point any vital infirmity in the statement of official witnesses which would go deep to the core of the case. She simply states that there are certain discrepancies in the statement of DSP Sukhdev Singh PW1 and Harjinderpal Singh PW2, the Investigating Officer with regard to timing especially the total time consumed by the DSP at the spot. From this, the learned counsel wants to develop that DSP Sukhdev Singh was not present at the spot and no recovery was effected in his presence.

I am not impressed with the argument advanced by Ms. Malhotra. Certain discrepancies are bound to occur even in the statements of most truthful witnesses. DSP Sukhdev Singh was the witness to almost all the important recovery memos. He categorically stated that after the receipt of the information, he immediately reached the spot and in his presence, the recovery was effected. Even if the two official witnesses are discrepant on certain in-significant aspects, the same has to be ignored especially when the basic substratum of the prosecution case is proved. In the present set of circumstances, where a person from other State (Rajasthan) was apprehended with heavy quantity of contraband, certain

minor discrepancies hither and thither would carry no weight so as to discard the case of the prosecution in its totality. I do not find the prosecution case stumbling on any vital flaw so as to see it with an eye of doubt for the purpose of extending benefit to the appellant.

The defence set up by the appellant, in my considered view, is hanging by a tenuous thread. As observed above, it could not be a case of false implication at all.

No other point has been left un-touched by me.

As a sequel to the aforesaid discussion, the net result now surfaces is that the prosecution has been able to prove the conscious possession of the appellant qua the contraband (8.5 kgs opium) beyond any shadow of reasonable doubt and, therefore, his conviction and sentence as already recorded under section 18 of the Act deserves to be upheld.

Consequently, the instant appeal is dismissed having no merit in it.

The appellant is stated to be in custody since the date of his conviction i.e. 20.7.2000. He shall serve his remaining substantive sentence.

Concerned quarters be informed.

(Virender Singh)
Judge

February 09, 2006
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